

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ADJUSTACAM LLC,

Plaintiff,

v.

AMAZON.COM, INC.; AUDITEK CORPORATION; BALTIC LATVIAN UNIVERSAL ELECTRONICS, LLC D/B/A BLUE MICROPHONES, LLC D/B/A BLUE MICROPHONE; BLUE MICROPHONES, LLC; CDW CORPORATION F/K/A CDW COMPUTER CENTERS, INC; CDW, INC.; CDW, LLC; COMPUSA.COM, INC.; COBRA DIGITAL, LLC; CREATIVE TECHNOLOGY LTD.; CREATIVE LABS, INC.; DELL, INC.; DIGITAL INNOVATIONS, LLC; EASTMAN KODAK COMPANY; EZONICS CORPORATION D/B/A EZONICS CORPORATION USA D/B/A EZONICS; FRY'S ELECTRONICS, INC.; GEAR HEAD, LLC; GENERAL ELECTRIC COMPANY; HEWLETT-PACKARD COMPANY; INTCOMEX, INC.; JASCO PRODUCTS COMPANY LLC D/B/A JASCO PRODUCTS COMPANY D/B/A JASCO; JWIN ELECTRONICS CORPORATION; KLIP XTREME LLC; KMART CORPORATION; LIFEWORKS TECHNOLOGY GROUP, LLC; MACALLY PERIPHERALS, INC. D/B/A MACALLY U.S.A.; MACE GROUP, INC.; MICRO ELECTRONICS, INC. DBA MICRO CENTER; NEW COMPUSA CORPORATION; NEWEGG, INC.; NEWEGG.COM, INC.; OFFICE DEPOT, INC.; OVERSTOCK.COM, INC.; PHOEBE MICRO INC.; PROLYNKZ, LLC; RADIOSHACK CORPORATION; ROSEWILL INC.; SEARS BRANDS, LLC; SEARS HOLDINGS CORPORATION D/B/A

CIVIL ACTION NO. 6:10 – CV –
00329 -- LED

SEARS; SEARS, ROEBUCK AND COMPANY; SAKAR INTERNATIONAL, INC.; SAKAR, INC.; SDI TECHNOLOGIES, INC.; SOFTWARE BROKERS OF AMERICA INC. DBA INTCOMEX CORPORATION D/B/A INTCOMEX; SYSTEMAX, INC. D/B/A COMPUSA; TARGET CORP.; TIGERDIRECT, INC.; TRIPPE MANUFACTURING COMPANY D/B/A TRIPP LITE; AND WAL-MART STORES, INC.,

Defendants.

**ANSWER OF THE DEFENDANT, GEAR HEAD, LLC
AND DEMAND FOR TRIAL BY JURY**

The defendant, Gear Head, LLC (“Gear Head”), answers the complaint of the plaintiff, AdjustaCam LLC (“AdjustaCam”) as follows:

PARTIES

1. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 1 of the Complaint.
2. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 2 of the Complaint.
3. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 3 of the Complaint.
4. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 4 of the Complaint.
5. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 5 of the Complaint.

6. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 6 of the Complaint.

7. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 7 of the Complaint.

8. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 8 of the Complaint.

9. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 9 of the Complaint.

10. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 10 of the Complaint.

11. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 11 of the Complaint.

12. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 12 of the Complaint.

13. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 13 of the Complaint.

14. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 14 of the Complaint.

15. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 15 of the Complaint.

16. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 16 of the Complaint.

17. Gear Head admits the allegations contained in Paragraph 17 of the Complaint.

18. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 18 of the Complaint.

19. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 19 of the Complaint.

20. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 20 of the Complaint.

21. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 21 of the Complaint.

22. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 22 of the Complaint.

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25. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 25 of the Complaint.

26. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 26 of the Complaint.

27. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 27 of the Complaint.

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29. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 29 of the Complaint.

30. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 30 of the Complaint.

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48. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 48 of the Complaint.

49. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 49 of the Complaint.

JURISDICTION AND VENUE

50. Gear Head does not contest subject-matter or personal jurisdiction. As to the remaining allegations, Paragraph 50 makes legal conclusions to which Gear Head is not

obligated to respond. To the extent Paragraph 50 makes any factual assertions, the allegations are denied.

51. Gear Head does not contest venue. As to the remaining allegations, Paragraph 51 makes legal conclusions to which Gear Head is not obligated to respond. To the extent Paragraph 51 makes any factual assertions, the allegations are denied.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 5,855,343

52. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 52 of the Complaint.

53. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 53 of the Complaint.

54. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 54 of the Complaint.

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100. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 100 of the Complaint.

101. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 101 of the Complaint.

102. Gear Head denies the allegations contained in Paragraph 102 of the Complaint.

103. Gear Head denies the allegations contained in Paragraph 103 of the Complaint.

104. Gear Head denies the allegations contained in Paragraph 104 of the Complaint.

105. Gear Head denies the allegations contained in Paragraph 105 of the Complaint.

106. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 106 of the Complaint.

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188. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 188 of the Complaint.

189. Gear Head is without sufficient information to admit or deny the allegations contained in Paragraph 189 of the Complaint.

190. Gear Head denies that Gear Head has damaged AdjustaCam or that Gear Head is liable to AdjustaCam for any amount.

191. Gear Head states that AdjustaCam's right to discovery is governed by the rules of civil procedure. Gear Head denies that it infringes the '343 patent and denies that any infringement was or is willful and reckless.

192. Paragraph 192 of the Complaint purports to describe a procedural matter to which a response is not required.

193. Gear Head denies the allegations contained in Paragraph 193 to the extent that it pertains to Gear Head.

WHEREFORE, Gear Head respectfully requests that this matter be dismissed against it and that it be awarded costs, including reasonable attorney's fees incurred in defending this matter.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE / FAILURE TO STATE A CLAIM

AdjustaCam fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE / INVALIDITY

Upon information and belief, the '343 patent and all claims contained within the patent are invalid for failure to satisfy the requirements of patentability under 35 U.S.C., including but not limited to §§ 101, 102, 103, and 112.

THIRD AFFIRMATIVE DEFENSE / NON-INFRINGEMENT

Gear Head has not infringed and does not infringe, induce infringement or contributorily infringe any claim of the '343 patent either literally or under the doctrine of equivalents.

FOURTH AFFIRMATIVE DEFENSE / PATENT MARKING

AdjustaCam is not entitled to any damages for alleged infringement because its failure to comply with the marking requirements of 35 U.S.C. § 287 and/or its failure to otherwise give notice that Gear Head allegedly infringed the '343 patent.

FIFTH AFFIRMATIVE DEFENSE / EQUITABLE DEFENSES

AdjustaCam's claims are barred by the equitable doctrines of laches, unclean hands, estoppel and/or a waiver.

SIXTH AFFIRMATIVE DEFENSE / UNAVAILABILITY OF INJUNCTIVE RELIEF

AdjustaCam is not entitled to injunctive relief because any injury is not immediate and irreparable; AdjustaCam has an adequate remedy at law; the balance of hardships favors no injunction; and the public interest is best served by no injunction.

SEVENTH AFFIRMATIVE DEFENSE / RESERVATION OF RIGHTS

Gear Head reserves all affirmative defenses under Rule 8C of the Federal Rules of Civil Procedure, the Patent Laws of the United States or any other defenses at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

GEAR HEAD DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.

Dated: September 17, 2010

Respectfully submitted by:

/s/ Herbert J. Hammond
Herbert J. Hammond
Attorney-In-Charge
State Bar No. 08858500
Vishal Patel
State Bar No. 24065885

THOMPSON & KNIGHT LLP
One Arts Plaza
1722 Routh St., Suite 1500
Dallas, Texas 75201
(214) 969-1700
(214) 969-1751 (Fax)

Patricia L. Davidson

MIRICK, O'CONNELL, DEMALLIE & LOUGEE,
LLP
100 Front Street
Worcester, Massachusetts 01608-1477
(508) 860-1540
(508) 983-6240 (Fax)

ATTORNEYS FOR DEFENDANT
GEAR HEAD, LLC

Certificate of Service

The undersigned certifies that the foregoing document was filed electronically on the 17th day of September, 2010 in compliance with Local Rule CV-5(a) and has been served on all counsel who have consented to electronic service and all other counsel by regular mail.

/s/ Herbert J. Hammond
Herbert J. Hammond

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